

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE DARREL RUTLEDGE,)	
)	
Petitioner,)	No. C 08-2193 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
A. FELKER, Warden,)	(Doc # 2)
)	
Respondent(s).)	
_____)	

Petitioner, a prisoner at High Desert State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a May 25, 2007 conviction from the Superior Court of the State of California in and for the County of Alameda.

Petitioner has filed several petitions for a writ of habeas corpus and/or prohibition in the state courts. They have all been denied; however, his direct appeal is still pending in the California Court of Appeal.

Petitioner must exhaust state judicial remedies as to all claims before turning to the federal courts for habeas review. 28 U.S.C. § 2254(b),(c). This requirement is not satisfied if there is a pending post-conviction proceeding in state court. See Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). A would-be federal habeas petitioner must await the outcome of all pending state post-conviction proceedings before his state remedies are exhausted. See id. Even if the federal constitutional question raised by the petitioner cannot be resolved in the pending state proceeding, that proceeding may result

1 in the reversal of the petitioner's conviction on some other ground, thereby mooted the
2 federal question. See id. (citations omitted). Petitioner must wait until his pending
3 direct appeal is resolved and exhausted in the state courts before seeking habeas relief in
4 federal court. There are no extraordinary circumstances in this matter compelling a
5 different conclusion.

6 Accordingly, the petition for a writ of habeas corpus is DISMISSED without
7 prejudice to refile a new petition after all pending state post-conviction proceedings
8 are completed. Based solely on his financial status, petitioner's request to file and
9 proceed in forma pauperis (doc # 2) is granted.

10 The clerk shall enter judgement in accordance with this order and close the file.

11 SO ORDERED.

12 DATED: May 2, 2008

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15 CHARLES R. BREYER
16 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EUGENE D RUTLEDGE,
Plaintiff,

Case Number: CV08-02193 CRB

CERTIFICATE OF SERVICE

v.

A FELKER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 2, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Eugene Darrel Rutledge F-79385
High Desert State Prison
Facility B (Building B1, Cell 115)
P.O. Box 3030
Susanville, CA 96127

Dated: May 2, 2008

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk